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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

rsm

Tyesha Jackson Wise
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TYESHA JACKSON WISE,

Plaintiff,

vs.

BMW FINANCIAL SERVICES NA, LLC, AND NICK
ALEXANDER IMPORTS

Defendant

Case No.:

2:22-CV-07635-MEMF-ASx

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, TYESHA JACKSON WISE, file their Complaint against the above-named Defendants as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a resident of the City of Inglewood, Los Angeles County, California.
2. Defendant, BMW Financial Services NA, LLC ("BMW Financial Services NA, LLC"), is a corporation authorized to do business in the State of California and, at all times relevant hereto, was engaged in the business of financing sales of motor vehicles, with its principal offices located in the City of Woodcliff Lake, Bergen County, New Jersey.
3. Defendant, Nick Alexander Imports ("Dealer"), is a corporation authorized to do business in the State of California and, at all times relevant hereto, was and is engaged in the business of selling and servicing motor vehicles and in the business of arranging for the financing of agreements relating to the sale of motor vehicles, and rendering advice and counsel to consumers with regard to and in relation to same, all within the Los Angeles, Los Angeles County, California.
4. At all times relevant hereto, Nick Alexander Imports and BMW Financial Services NA, LLC, in the ordinary course of their business, regularly extended or offered to extend consumer credit for which a finance charge is or may be imposed or by written agreement which is payable in more than four installments.

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

1 5. On or about July 24, 2016, the parties entered into a consumer transaction, in that Plaintiff agreed to
2 enter into a contract to purchase a combined and inseparable “bundle” of goods and services, including a certain
3 motor vehicle for personal, family or household use, to-wit: a used 2013 BMW 3 Series, VIN No.
4 WBA3C1G56DNR45620 (the “subject vehicle”), from Nick Alexander Imports, and, as part of the deal, Nick
5 Alexander Imports, agreed to enter into said contract regarding said good and services and to arrange, and did so
6 arrange, for BMW Financial Services NA, LLC, to extend credit to Plaintiff and to finance the transaction.

7 6. In consideration of the agreement by Nick Alexander Imports to sell Plaintiff the “bundle” of goods and
8 services, Plaintiff turned over to Nick Alexander Imports, possession of Plaintiffs’ Toyota Camry.

9 7. The goods which were the subject of the “bundled” agreement included the aforementioned Toyota
10 Camry motor vehicle, while the “services” portion of the “bundled” agreement included, among other things, the
11 assistance and advice the Dealer gave to Plaintiff concerning obtaining an extension of credit in order to finance the
12 entire transaction.

13 8. At the time of Plaintiffs’ purchase, Plaintiff entered into the foregoing consumer credit transaction by
14 executing a retail installment contract with the Nick Alexander Imports, which contract included a finance charge,
15 which finance contract was assigned by Nick Alexander Imports, to BMW Financial Services NA, LLC.

16 9. As part of the consumer credit transaction, Nick Alexander Imports, and/or BMW Financial Services
17 NA, LLC retained a security interest in the subject vehicle.

18 10. At all times relevant hereto, Nick Alexander Imports, on behalf of itself and as an agent for BMW
19 Financial Services NA, LLC, represented to Plaintiffs that it would obtain “the best interest rate” available.

20 11. As part of the deal, Plaintiff traded in their 2012 Toyota Camry and, as part of the deal, Nick
21 Alexander Imports’ salesperson represented to Plaintiff that the Toyota Camry would be “paid off” as part of the
22 deal, leading Plaintiff to believe that Nick Alexander Imports was going to pay off the loan balance in exchange for
23 getting the vehicle and having the right to resell it later.

24 12. After purchasing the subject vehicle, Plaintiff discovered that the sales price of the subject vehicle had
25 actually been increased over and above the fair market value and the increase was then financed by Nick Alexander
26 Imports, increasing the amount being financed by BMW Financial Services NA, LLC, through the arrangements
27 made by Nick Alexander Imports, with BMW Financial Services NA, LLC.

1 13. BMW Financial Services NA, LLC, is subject to all of Plaintiffs' claims and defenses against Nick
2 Alexander Imports, pursuant to Automobile Sales Finance Act California Civil Code Section 2981 and 16 CFR 433,
3 arising out of the above retail installment transaction.

4 14. This cause arises out of the Defendants' negligence, misrepresentation, breaches of warranty and
5 contract and violations of statutes, as hereinafter set forth.

6 15. Plaintiffs seek damages in excess of \$10,000, exclusive of interest, costs and attorney fees and/or
7 equitable relief, and this cause is otherwise within the jurisdiction of this Court.

8
9 **Count I**

10
11 ***VIOLATION OF MOTOR VEHICLE INSTALLMENT SALES ACT (ASFA CALIFORNIA CIVIL CODE***
12 ***SECTION 2981 ET SEQ)***

13 16. Plaintiff incorporates by reference all facts and allegations set forth in this Complaint.

14 17. Plaintiff is an "buyer" within the meaning of Automobile Sales Finance Act California Civil Code
15 Section 2981(a)(2)(c).

16 18. Nick Alexander Imports is a "seller" within the meaning of Automobile Sales Finance Act, California
17 Civil Code Section 2981(a)(2)(b).

18 19. BMW Financial Services NA, LLC is a "holder" within the meaning of Automobile Sales Finance Act
19 California Civil Code Section 2982.5(d)(4).

20 20. The aforementioned transaction constitutes an "installment sale contract" within the meaning of
21 Automobile Sales Finance Act California Civil Code Section 2981(a)(1)(2).

22 21. Nick Alexander Imports violated the Automobile Sales Finance Act in the following particulars:

23 a. By failing to provide Plaintiff with the disclosures required under the act prior to
24 Plaintiff's execution of the contract;

25 b. Based upon information and belief, by requiring the Plaintiff to sign the contract with
26 impermissible blank spaces;

1 c. By failing to provide Plaintiff with a copy of the signed contract contemporaneously
2 with the execution of the contract;

3 d. Such other and further violations as may be disclosed through further investigation
4 and discovery.

5 22. BMW Financial Services NA, LLC is subject to all of Plaintiff's claims and defenses against Nick
6 Alexander Imports pursuant to Automobile Sales Finance Act California Civil Code Section 2982(d)(4).

7 23. Violation of this Act is also a contemporaneous violation of the California Consumer Protection Act by
8 these defendants, and as a result of Defendants' violations of the Act, Plaintiff is entitled to recover the greater of
9 her actual damages or \$750.00, pursuant to Section 1798.81.5(D)(1)(A) of California Civil Code.

10 24. As a further result of Defendants' violations of the Act, Defendants have contemporaneously violated
11 the California Consumer Protection Act and the Truth in Lending Act, and they are barred from recovery of interest
12 or other finance charges arising out of the subject retail installment contract, and Plaintiff is entitled to recover three
13 times the amount of the interest charged in this matter in addition to statutory damages and reasonable costs and
14 attorney fees.

15 WHEREFORE, Plaintiffs pray that this Honorable Court enter Judgment against Defendants, jointly and
16 severally, as follows:

17 a. Order that Defendants refund Plaintiffs' down payment (including the fair market value of the trade-in
18 vehicle) and payments made, together with incidental and consequential damages and cancel the subject retail
19 installment contract or, alternatively, reform the subject contract as equity may require;

20 b. Award Plaintiff damages in whatever amount above \$10,000 they are found to be entitled, plus interest,
21 costs and reasonable attorney fees; and

22 c. Such other and further relief as this Court deems appropriate.

23 **COUNT II**

24 ***VIOLATION OF TRUTH IN LENDING ACT***

25
26 25. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.
27
28

1 WHEREFORE, Plaintiff pray for judgment against Defendants, jointly and severally, whichever is greater,
2 plus interest, costs and reasonable fees as permitted by law.

3
4 COUNT IV

5 ***FRAUD AND/OR MISREPRESENTATION***

6 33. Plaintiffs incorporate by reference all facts and allegations set forth in this Complaint.

7 34. During the course of the subject transaction, Nick Alexander Imports represented to Plaintiff that the
8 Plaintiffs' trade-in vehicle would be paid off as part of the deal and expressly or impliedly represented that the price
9 of the subject 2013 BMW 3 Series was not being increased to create funds to pay off the trade-in vehicle with and
10 omitted and concealed from Plaintiff the fact that Defendants were actually financing the payoff cost by increasing
11 the amount being borrowed from BMW Financial Services NA, LLC, by more than the actual and/or fair market
12 purchase price of the BMW vehicle.

13 35. During the course of the subject transaction, a knowing concealment of fact was done by Defendants,
14 jointly and severally, at a time when, and under circumstances where, there was a duty to disclose, to-wit: that
15 Defendants were actually setting up the transaction in such a way that Plaintiff was financing not only the purchase
16 price of the 2013 BMW 3 Series vehicle but also an additional amount which said Defendants would use to pay off
17 the trade in vehicle and generate additional profits for themselves.

18 36. During the course of the subject transaction, a knowing concealment of fact was done by Defendants,
19 jointly and severally, at a time when, and under circumstances where, there was a duty to disclose, to-wit: that
20 Defendants were not providing Plaintiffs with the "best interest rate available" as represented but, in fact, were
21 charging Plaintiff an additional finance charge over and above the finance percentage rate (the "buy rate") that
22 BMW Financial Services NA, LLC was willing to provide to Nick Alexander Imports

23 37. Each of Defendants' acts and omissions of representation and concealment were material to the
24 transaction.

25 38. Each of Defendants' acts and omissions of representation and concealment were made with the intent
26 of misleading Plaintiffs into relying upon it.

1 39. Plaintiff was justified in relying on the representation and a lack of any concealment, and did, in fact,
2 so rely.

3 40. Defendants benefited from Plaintiffs' reliance by causing Plaintiff to enter into the transaction and by
4 gaining the additional profits resulting from Plaintiffs' reliance on Defendants' acts and omissions.

5 41. As a direct and proximate result of Defendants' acts and omissions, Plaintiff suffered damages, past,
6 present and future, including but not limited to, the loss of the benefit of their bargain, paying an excessive price for
7 the vehicle, excessive finance charges, mental anguish, humiliation, embarrassment and aggravation, together with
8 costs and fees incurred in obtaining relief from Defendants' wrongful acts and omissions.

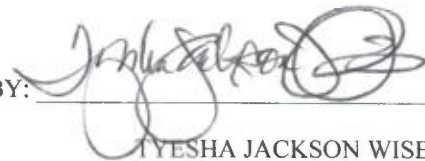
9
10 WHEREFORE, Plaintiffs pray for Judgment against Defendants, jointly and severally, in whatever amount
11 above \$10,000 they are deemed to be entitled, plus equitable relief.

DEMAND FOR JURY TRIAL

Plaintiff demand jury trial for the above-entitled cause.

Respectfully submitted,

BY:



IYESHA JACKSON WISE, PRO SE

DATED:

Dated this 19th day of October, 2022